Whatever be the true state of affairs four things, I think, must at this stage be accepted.

The first of these is that on 15th November, 1961, that is to say four months before the first goods were supplied, the appellant registered himself and Yong under the Registration of Businesses Ordinance as trading in partnership as general merchants under the name of Chan & Yong Trading.

The second thing is that by a document which is not dated but which according to the evidence was executed about the same time Chan and Yong addressed a letter to the Bangkok Bank in Kuala Lumpur applying to open a current account in their names and stating they were partners of a firm and cheques of the account were to be signed by both of them.

The third thing is that a substantial amount of money was paid into that account to open it by Chan.

The fourth thing is that before doing any business with the respondent firm there was a meeting in a coffee shop between Chan and Yong and a representative of the respondent firm at which Chan held himself out to be a partner with Yong in a hardware business and it is clear that it was on that representation business between the parties commenced. I am fully aware that his presence at that meeting was denied by Chan, but it was found as a fact by the trial judge that he was present. That finding depended on the judge's estimate of the credibility of the witnesses who said Chan was there and of Chan himself and we as a Court of Appeal must accept it.

For myself I am content to leave the case there and say that on all that there was an agency by estoppel. Here I would quote the following passage from *Bowstead* on Agency (12th Ed. at p. 10) :—

"Where any person, by words or conduct, represents or permits it to be represented that another person has authority to act on his behalf, he is bound by the acts of such other person with respect to any one dealing with him as an agent on the faith of such representation, to the same extent as if such other person had the authority which he was so represented to have."

Whether or not these people were in any partnership — it has been argued that Yong could not be a partner by reason of the decisions of the Privy Council in two cases that have been cited to us — irrespective of that, it is quite clear that Chan held out Yong as his agent who had authority to do things on his behalf and it seems to me that he is clearly liable for his agent's acts.

Some point has been made of the minority of Yong at the material time. That point I think is clearly covered by sections 135, 136 and 137 of the Contracts (Malay States) Ordinance, 1950. Section 135 provides that:

"An 'agent' is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the 'principal'."

Section 136 reads as follows:

"Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent."

Section 137 states that:

"As between the principal and third persons, any person may become an agent; but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained."

It is a matter of interest that section 137 seems to be a little narrower than the English law but that is beside the point. It is perfectly clear that any person, irrespective of his competency to contract, may become an agent and the only restriction on that is that if he is of tender age he cannot become thereby responsible to his principal. But that has no bearing whatsoever on his principal's liability to third parties.

In all the circumstances for myself I would dismiss the appeal with costs.

Barakbah C.J. (Malaya) and **Tan Ah Tah F.J.** concurred.

Appeal dismissed.

Solicitors: *M. J. Mathew*; *Shook Lin & Bok.*

CHENG SWEE TIANG v. PUBLIC PROSECUTOR

[A.Cr.J. (Wee Chong Jin C.J., Chua & Ambrose JJ.) May 11, 1964]

[Singapore — Magistrate's Appeal No. 74 of 1963]

Evidence — Agent provocateur — Admissibility of illegally obtained evidence — Judicial discretion to disallow such evidence if prejudicial to accused — Public policy — Conflicting interests — Whether harm to public substantially incontestable — Evidence Ordinance (Cap. 4), s. 4.

While evidence unlawfully obtained is admissible if relevant, there is a judicial discretion to disallow such evidence if its reception would operate unfairly against an accused. *Kuruma* v. *The Queen* (1) and *Callis* v. *Gunn* (2) followed. From a standpoint of principle two important interests come into conflict when considering the question of admissibility of evidence so obtained. On the one hand there is the interest of the individual to be protected from illegal invasions of his liberties by the authorities and on the other hand the interest of the State to secure that evidence bearing upon the commission of crime and necessary to enable justice to be done shall not be withheld from the courts on any merely technical ground. Purely on principle it is not clear that the harm to the public is substantially incontestable if evidence unlawfully obtained is admitted.

Per Ambrose J. (dissenting): "To my mind the discretion referred to in *Kuruma's* case and *Callis* v. *Gunn* seems to be a new development of the common law in England. It was not referred to by Lord Goddard in *Brannan* v. *Peek.*(6) It was not mentioned by Spenser

Wilkinson J. in his judgment in *Teja Singh and Mohamed Nasir* v. *Public Prosecutor*,[7] where it was argued unsuccessfully that the courts should frown upon questionable methods to the extent of refusing to accept the evidence of *agents provocateurs*. It is not mentioned in *Sarkar's* Law of Evidence, 10th edition, 1959. It appears therefore that the courts in India have not recognized such a discretion. I do not see how the courts in Singapore can recognize such a discretion without express statutory provision."

[**Editorial Note:** This appeal first came before Tan Ah Tah J. (as he then was) and upon application by counsel for the appellant it was ordered under section 295(3) of the Criminal Procedure Code (Cap. 132) to be heard before a court consisting of three judges.]

Cases referred to:—

(1) *Kuruma* v. *The Queen* [1955] A.C. 197; [1955] 1 All E.R. 236.

(2) *Callis* v. *Gunn* [1963] W.L.R. 931; [1963] 3 All E.R. 677.

(3) *Richardson* v. *Kellish* 2 Bing. at p. 252.

(4) *Egerton* v. *Brownlow* 4 H.L.C. at p. 123.

(5) *Fender* v. *St. John-Mildmay* [1938] A.C. at p. 12.

(6) *Brannan* v. *Peek* [1947] 2 All E.R. 573.

(7) *Teja Singh and Mohamed Nasir* v. *Public Prosecutor* [1950] M.L.J. 71.

(8) *R.* v. *Mortimer* (1911), 80 L.J. K.B. 76 at p. 77.

CRIMINAL APPEAL.

David Marshall for the appellant.

Tan Boon Teik (Solicitor-General) for the respondent.

Wee Chong Jin C.J.: The appellant was charged with assisting in the carrying on of a public lottery, to wit, a "characters lottery" and at the conclusion of the trial he was found guilty and sentenced to a fine of $750 or three months imprisonment in default.

During the hearing of the appeal the learned Solicitor-General indicated to the court that he was not seeking to support the conviction on the evidence and accordingly without counsel for the appellant completing his argument on the facts the appeal was allowed with one member of the court dissenting.

A point of law on the discretionary exclusion of evidence illegally obtained was however raised by the appellant and was fully argued before us and the court indicated that it would give its opinion at a later date.

Two police officers on the instructions of a superior officer entered the appellant's shop which deals in textiles, provisions and cigarettes for the express purpose of entrapping the appellant into accepting their stakes in a 10,000 characters lottery.

On entering the shop one of the officers asked to buy sugar and, when told by the appellant that he was not selling sugar, asked whether he could buy some numbers in a lottery commonly referred to as the 10,000 characters lottery. As a result this officer purchased $3 worth in this lottery. He then left the shop, told his superior officer of what had taken place and the latter then raided the shop under the authority of a search warrant, seized certain articles and cash and arrested the appellant.

It is not in dispute that the senior police officer sent a subordinate into the shop to commit an offence for the purpose of getting evidence against someone in that shop and in order that an offence by another person may be detected. Counsel for the appellant rightly concedes that evidence obtained in this manner, if relevant, was in law admissible (*per* Goddard C.J. in *Kuruma* v. *The Queen* [1] at page 203).

Another proposition put forward by counsel for the appellant and which is not in dispute is that in every criminal case a judge has a discretion to disallow evidence, even if in law relevant and therefore admissible, if admissibility would operate unfairly against an accused. (*Kuruma* v. *The Queen, supra,* and *Callis* v. *Gunn* [2]).

It is undisputed law therefore that while evidence unlawfully obtained is admissible if relevant, there is a judicial discretion to disallow such evidence, if its reception would operate unfairly against an accused.

Counsel for the appellant however seeks to establish a further proposition namely that in the exercise of its discretion and as a matter of public policy the court will normally, though not necessarily, exclude evidence obtained by law enforcement officers by consciously unlawful means.

This is a proposition I find myself unable to accept. First, it is a proposition not supported by any authority which is binding on this court though there are *dicta* in some Scottish cases and in a dissenting judgment of Holmes J. of the Supreme Court of the United States of America cited by counsel for the appellant which appear to lend some support to it.

Secondly, the use of the doctrine of public policy has consistently been frowned upon by the courts. Burrough J. (quoting Hobart C.J.) said of it in *Richardson* v. *Mellish* [3] "Public policy is an unruly horse, and difficult to ride." Parke B. said of it in *Egerton* v. *Brownlow* [4] "Public policy is a vague and unsatisfactory term....; it is capable of being understood in different senses, it may, and does, in its ordinary sense, mean 'political expedience', or that which is best for the common good of the community; and in that sense there may be every variety of opinion, according to education, habits, talents, and dispositions of such person, who is to decide, whether an act is against public policy or not. To allow this to be a ground of judicial decision, would lead to the greatest uncertainty and confusion". More recently Lord Atkin in *Fender* v. *Mildmay* [5] said of it "....the doctrine should only be invoked in clear cases in which the harm to the public is substantially incontestable....".

No evidence is before us that if evidence obtained by law enforcement officers by illegal means is generally admitted against an accused in a criminal case the harm to the public is substantially incontestable and there can be I think no question that from the standpoint of principle two important interests come into conflict when considering the question of admissibility of such evidence so obtained. On the one hand there is the interest of the individual to be protected from illegal invasions of his liberties by the authorities and on the other hand the interest of the State to secure that evidence bearing upon the commission of crime and necessary to enable justice to be done shall not be withheld from the courts on any merely technical ground.

It seems to me that it is sufficient merely to state these two conflicting interests to dispose of the question of public policy posed by counsel for the appellant and on my part to state I am not at all satisfied that purely on principle it is clear that the harm to the public is substantially incontestable if evidence so obtained is admitted.

While the courts have consistently and in no uncertain language criticised the use of *agent provocateurs*, whether they be law enforcement officers or not, the courts have also consistently admitted evidence obtained by such persons provided its admissibility does not operate unfairly against an accused.

It seems to me, both on principle and authority, that no absolute rule can be formulated and the question is one depending on the circumstances of each particular case.

This appeal having been allowed on other grounds I do not propose to go into the question whether in the particular circumstances of this case, the evidence obtained by the two police officers while in the appellant's shop should or should not have been admitted by the learned magistrate.

Chua J.: I have had the advantage of reading the judgment of the learned Chief Justice with which I agree and to which I have nothing to add.

Ambrose J.: The appellant was convicted on a charge of assisting in carrying on a public lottery, to wit, a characters lottery under section 4(1)(c) of the Common Gaming Houses Ordinance, 1961.

The facts were these. On the 16th February, 1963, about 1.35 p.m. a detective staff sergeant and a woman police constable went into a provision shop, No. 52-24 Bukit Panjang, Singapore. The appellant was in the shop. The sergeant asked him whether he was selling sugar, and he said, "No". The sergeant saw a machine on the table, Ex. P. 4, and asked the appellant whether he could buy 10,000 character numbers. He said, "Yes", and asked what numbers he wanted to buy. The sergeant handed him a piece of paper with the numbers 2648, 3587 and 4496 written on it together with $3. The appellant pressed the machine and a slip of paper came out, and the appellant handed it to the sergeant. This slip, Ex. P. 2, had the following words and figures printed on it:

16.2.63

LIANG WAH
52-24 Bukit Panjang
Singapore
Tel: 69963

391 — 26.48
391 — 35.87
391 — 44.96
391 TL 107.31

The sergeant went out of the shop with the woman police constable and met an assistant superintendent of police named Lee, who was waiting in his motor car a short distance away, and handed the slip to him. A.S.P. Lee and the sergeant returned to the shop immediately. Lee was armed with a search warrant which he himself had issued under section 12 of the Common Gaming Houses Ordinance. The sergeant identified the appellant. Lee revealed his identity to the appellant, showed him the search warrant, and arrested him. He saw the machine, Ex. P. 4, and obtained the key to the machine from the appellant. He opened the machine with the key and removed from it a roll of paper bearing printed matter. The roll contained the three four-digit numbers appearing on Ex. P. 2 together with the total and 216 other four-digit numbers with totals appearing at intervals.

Counsel for the appellant submitted that the sergeant was an *agent provocateur* and that the sergeant obtained evidence by committing an offence himself; that in the exercise of its discretion and as a matter of public policy the court will normally though not necessarily exclude evidence obtained by law enforcement officers by consciously unlawful means; and that there was a miscarriage of justice in that the magistrate admitted evidence illegally obtained without adverting to the discretion in the court to reject such evidence or alternatively on erroneous principles.

Great reliance was placed on three cases. The first was *Brannan* v. *Peek*,[6] where Lord Goddard C.J. said:

> "There is another point of much greater public importance. The court observes with concern and disapproval the fact that the police authority at Derby thought it right to send a police officer into a public house to commit an offence. It cannot be too strongly emphasised that, unless an act of parliament provides for such a course of conduct — and I do not think any act of parliament does so provide — it is wholly wrong for a police officer or any other person to be sent to

commit an offence in order that an offence by another person may be detected. It is not right that police authorities should instruct, allow or permit detective officers or plain clothes constables to commit an offence so that they can prove that another person has committed an offence. It would have been just as much an offence for the police constable in the present case to make the bet in the public house as it would have been for the bookmaker to take the bet if in doing so he had committed an offence. I hope the day is far distant when it will become a common practice in this country for police officers to be told to commit an offence themselves for the purpose of getting evidence against someone; if they do commit offences they ought also to be convicted and punished, for the order of their superior would afford no defence".

It is to be observed that Lord Goddard did not say that the evidence of the police officer sent into a public house to commit an offence should be rejected; and that Lord Goddard did not refer to any discretion in the court of the kind suggested by counsel for the appellant in the present case.

The next case relied on by counsel was *Kuruma* v. *R.*[1] There the accused was convicted of being in unlawful possession of amunition, which was discovered in a search of his person by a police officer below the permitted rank. In giving the advice of the Judicial Committee of the Privy Council, Lord Goddard C.J. expressed the view that the evidence had been rightly admitted and that, if evidence is relevant, the court is not concerned with how the evidence was obtained. But the Board recognized that the court always has a discretion to disallow evidence in a criminal case if the strict rules of admissibility would operate unfairly against the accused.

The third case relied on by counsel was *Callis* v. *Gunn.*[2] There the defendant was asked to give his fingerprints; he was not cautioned that he might refuse and that, if he did give them, they might be used in evidence; and he gave them without objection. Lord Parker C.J. said:

"In every criminal case a judge has a discretion to disallow evidence, even if in law relevant and, therefore, admissible, if admissibility would operate unfairly against an accused. I would add that in considering whether admissibility would operate unfairly against an accused one would certainly consider whether it had been obtained in an oppressive manner by force or against the wishes of the accused. That is the general principle.

. . . . . .

In my judgment fingerprint evidence taken in these circumstances is admissible in law subject to this overriding discretion. That discretion, as I understand it, would certainly be exercised in excluding the evidence if there was any suggestion of it having been obtained oppressively, by false representations, by a trick, by threats, by bribes, anything of that sort.

. . . . . .

On the facts found this court is of opinion that there was nothing which would justify the exercise of a discretion in favour of excluding this evidence".

The question arises whether the courts in Singapore have the discretion which is referred to in *Kuruma's* case and *Callis* v. *Gunn.* The Singapore Evidence Ordinance, Chapter 4 of the 1955 edition of The Laws of Singapore, is the Straits Settlements Evidence Ordinance of 1893 with certain amendments. The Ordinance of 1893 enacted the provisions of the Indian Evidence Act, 1872, with a few differences. The Indian Evidence Act is not an exact reproduction of the English law of evidence as it was in 1872. The Singapore Evidence Ordinance and certain rules of evidence to be found in other Singapore Ordinances, form a complete code for Singapore: and the English rules of evidence, save so far as they are embodied in a Singapore Ordinance, have no application whatsoever in Singapore: see *Roland Braddell's* "The Law of the Straits Settlements" (1932) Vol. II page 29. To my mind the discretion referred to in *Kuruma's* case and *Callis* v. *Gunn* seems to be a new development of the common law in England. It was not referred to by Lord Goddard in *Brannan* v. *Peek.* It was not mentioned by Spenser Wilkinson J. in his judgment in *Teja Singh and Mohamed Nasir* v. *Public Prosecutor,*[7] where it was argued unsuccessfully that the courts should frown upon questionable methods to the extent of refusing to accept the evidence of *agents provocateurs.* It is not mentioned in *Sarkar's* Law of Evidence, 10th edition, 1959. It appears therefore that the courts in India have not recognized such a discretion. I do not see how the courts in Singapore can recognize such a discretion without express statutory provision.

If, however, the courts in Singapore do have a discretion to disallow evidence in criminal cases if the strict rules of admissibility would operate unfairly against the accused, I am of the opinion that the facts of the present case would not justify the exercise of the discretion so as to exclude the evidence obtained by the sergeant. The evidence was not obtained oppressively, by false representations, by a trick, by threats, by bribes, or anything of that sort.

In my view, the magistrate rightly admitted the evidence of the sergeant; it was relevant and the magistrate was not concerned with how the evidence was obtained; and there was no miscarriage of justice. I must add here that, in my opinion, the sergeant was not an *agent provocateur* as he did not instigate or provoke the commission of a crime. It is one thing to lay a trap for catching a man who has every intention of assisting in carrying on a public lottery and quite another thing to instigate a man to assist in carrying on a public lottery when he has not evinced any intention to do so. As regards the complaint that the sergeant obtained evidence by committing an offence himself, the answer is provided by the following passage from the judgment of Lord Alverstone C.J. in *R.* v. *Mortimer,*[8] at page 77:

"I do not like the police traps any more than does anybody else; but at the same time there are some offences the commission of which cannot be found out in any other ways, and unlawful acts done in consequence of the trap are none the less unlawful".

The next point submitted by counsel for the appellant was that the magistrate erred in law in admitting evidence of statements made by the appellant to the sergeant. Section 121(1) of the Criminal Procedure Code (Cap. 132) provides as follows:

"Save as herein provided, no statement made by any person to a police officer in the course of a police investigation made under this Chapter shall be used in evidence".

The magistrate decided that the sergeant was not a police officer at the time of the investigation. In my opinion he was clearly wrong. The Solicitor-General, who represented the respondent, conceded that the statements made by the appellant to the sergeant were made in the course of a police investigation and were inadmissible.

It seems to me, however, that the evidence remaining after excluding those statements was sufficient to support the conviction. There was the evidence of the sergeant that the intention expressed by him to the appellant was that he wished to buy 10,000 character numbers; that the numbers he wanted were 2648, 3587 and 4496; that the numbers were written on a piece of paper which he handed to the appellant; that he paid the appellant $3 and received a slip of paper, Ex. P. 2, from him. Ex. P. 2 purported to be a receipt for a cash sale covering three items totalling $107.31. But it is clear that there was no such cash sale. Ex. P. 2 contained the three numbers which the sergeant wanted and a total to give it the appearance of a cash sale receipt. In my opinion, Ex. P. 2 on the evidence of the sergeant, was clearly a lottery ticket within the meaning of section 2(1) of the Common Gaming Houses Ordinance, 1961, which defines a lottery ticket as follows:

"Lottery ticket" includes any paper, figure or writing which either expressly or tacitly entitles or purports to entitle the holder to receive any money or money's worth on the happening of any event or contingency connected with any public lottery;

It is to be noted that the same subsection defines a public lottery as follows:

"Public lottery" means a lottery to which the public or any class of the public has or may have access and every lottery shall, until the contrary is proved, be deemed a public lottery;

Under section 10(1) of the Common Gaming Houses Ordinance a person selling lottery tickets shall be presumed until the contrary is proved to be assisting in a public lottery then in progress. The appellant elected to remain silent and failed to rebut this presumption. It may be added here that the roll of paper, Ex. P. 6, removed from the machine contained 219 entries all of which consisted of four-digit numbers, with totals appearing at intervals. The roll contained the three four-digit numbers appearing on the slip of paper which the sergeant received from the appellant. As all the numbers on the roll excluding the totals were four-digit numbers it seemed unlikely that the roll was a record of cash sales.

The third point submitted by counsel for the appellant was that the magistrate erred in law in accepting the bare expression of opinion of the expert witness, Inspector Yap, given without indicating the reasons on which his opinion was based. Inspector Yap testified that Ex. P. 2 was a staking slip, a record of 3 stakes in the 10,000 characters lottery, and that Ex. P. 6 was a record of 219 stakes in the 10,000 characters lottery. Here attention must be drawn to section 10(2) of the Common Gaming Houses Ordinance which provides as follows:

"Where evidence is given by a police officer not below the rank of sergeant that any document produced before the court is a lottery ticket of any public lottery or is an account, memorandum, riddle or record of stakes or wagers in or relating to any public lottery, the court shall presume that such document is a lottery ticket of such public lottery or an account, memorandum, riddle or record of stakes or wagers in or relating to such public lottery, as the case may be".

If this statutory presumption is taken into consideration, counsel's submission was not quite correct. It must be conceded, however, that as Inspector Yap stated in cross-examination that his opinion was based on the fact that Exs. P. 2 and P. 6 were sent to him by the C.I.D. his opinion was discredited and should have been disregarded by the magistrate. But excluding Inspector Yap's evidence, there was enough evidence to support the conviction. The discrediting of the expert did not mean that the rest of the prosecution evidence had been rebutted by the defence.

It was for the above reasons that I came to the conclusion that the appeal should be dismissed.

Appeal allowed.

LIM LEE TONG & ANOR. v. RAJAH

[O.C.J. (Ong J.) May 15, 1964]

[K.L. — Civil Suit No. 937 of 1962]

Landlord and Tenant — Controlled premises — Rent — Tenant's failure to pay — Whether landlord to make demand on premises — Whether rent due under covenant or privity of estate — Substantial damage to premises — Whether ground for possession — Control of Rent Ordinance, 1956, s. 12(1)(c), (d).

The plaintiffs were the landlords of certain rent controlled premises occupied by the defendant at a monthly rent of $40 per house which was subsequently reduced to $18 per house. The defendant failed to pay rent for six months as a result of which the plaintiffs